

Internal Revenue Service memorandum

date: Dec 23 1998

to: Regional Chief Compliance Officers
District Director, Key District Offices (EP/EO)
Information Copy: EP/EO Division Chiefs

from: Director, Exempt Organizations Division OP:E:EO
signed Marcus S. Owens

subject: Requests for Technical Advice in Cases Involving Excess Benefits Transactions or Inurement

Proposed regulations, providing guidance on IRC 4958, were issued August 24, 1998. We are working for the expeditious issuance of final regulations, which remains a priority item for the Service and Treasury. Nonetheless, as the IRC 4958 intermediate sanctions are generally effective for transactions occurring after September 13, 1995, as a matter of statute, they may be applicable to cases currently under examination.

Section 601.201(n)(9)(ii)(b) of the Statement of Procedural Rules, encourages key district directors and Appeals offices to request technical advice on any technical or procedural question arising in connection with any case involving Exempt Organizations issues that cannot be resolved on the basis of law, regulations, or other clear precedent. See also, Rev. Proc. 98-5, sec. 4.04, 1998-1 IRB 161, and IRM 7(13)12.1(2). Additionally, the procedural rules require the key district directors and Appeals offices to request technical advice on any issue arising in an Exempt Organizations case concerning qualification for exemption if such issue is not covered by published precedent.

Pursuant to these procedural rules, memoranda dated October 30, 1996, and June 25, 1998 (see attached), were issued instructing Key District Offices to contact Tom Miller, whose telephone number is (202) 622-5656, or Toussaint Tyson at (202) 622-8363, to discuss the application of intermediate sanctions to particular fact patterns and to discuss the technical advice process.

Because of questions raised during the regulation drafting process and in connection with examinations in process, and to insure consistent analysis and application of both IRC 4958 and the inurement proscriptions, it is important that field offices follow the instructions set forth in the Statement of Procedural Rules, the revenue procedure and the Internal Revenue Manual, as well as the earlier memoranda identified above.

The preceding requirement to discuss fact patterns with Headquarters and to request technical advice applies to:

1. All cases in which a tax under IRC 4958 is being proposed;
2. All cases in which an adverse action under an inurement proscription is being proposed;
3. All IRC 4958 excess benefit transaction cases being considered for resolution by a closing agreement; and
4. All inurement cases being considered for resolution by closing agreement.

The preceding requirements apply to cases involving either IRC 501(c)(3) organizations or IRC 501(c)(4) organizations.

Please refer to the June 25, 1998, memorandum for the specific procedures concerning separate requests for technical advice on each exempt organization and each disqualified person participating in the excess benefit transaction.

These procedures will be incorporated into the Internal Revenue Manual.

If you have any questions concerning this memorandum, please contact me; or, if you prefer, a member of your staff may contact Mr. Miller at (202) 622-5656 or Mr. Tyson at (202) 622-8363.